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09/854,039	05/11/2001	James P. Blasingame	0720.P001A	8173
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RICHARD D. CLARKE LAW OFFICE OF RICHARD D. CLARKE 3755 AVOCADO BLVD., #1000 LA MESA, CA 91941-7301			EXAMINER TOMASZEWSKI, MICHAEL	
			ART UNIT	PAPER NUMBER
			3626	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/854,039	BLASINGAME ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mike Tomaszewski	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 33-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Notice To Applicant***

1. This communication is in response to the amendment filed on 3/2/07. Claims 33-34, 36-41 and 43-45 have been amended. Claims 33-56 are pending.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 33-39 and 41-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Joao* (6,283,761; hereinafter *Joao*), in view of *Campbell et al.* (6,047,259; hereinafter *Campbell*).

(A) As per new claim 33, *Joao* discloses a networked medical information system for clinical practices which facilitates the exchange of medical data between doctor and patient, and enables the generation of an editable physician's preliminary chart note, comprising:

- (1) a central server containing medical information databases thereon (*Joao*: col. 2, lines 63-65);
- (2) one or more client computers, including patient's computers, physician's computers and physician's front office administrative computers, all able to link to said central server using standard shared communications protocols (*Joao*: col. 15, lines 46-53);
- (3) a pre-visit summary text database used to generate a pre-visit patient summary including condition-specific information derived from said patient answers to said condition-specific questions (*Joao*: col. 1, lines 46-62; col. 20, lines 21-27; col. 26, lines 10-38);
- (4) a physician oriented condition-specific database, used to generate condition-specific material for the purpose of preparing a pre-visit physician report based upon said patients answers (*Joao*: col. 20, lines 21-27; col. 26, lines 10-38);
- (5) a medical chart note database used to build an editable preliminary medical chart note including condition-specific clinical information, and further including the patient's specific problem, chief complaint or reason for being admitted, a history of patient's present illness, patient's past medical history, and a review of patient's current symptoms for the physician (*Joao*: col. 16, lines 38-col. 20, line 8); and

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- (6) a medical education database used to generate a condition-specific post-visit report for the patient (*Joao*: col. 17, lines 25-60; col. 25, lines 54-58; col. 26, lines 10-38).

*Joao*, however, fails to expressly disclose a networked medical information system for clinical practices which facilitates the exchange of medical data between doctor and patient, and enables the generation of an editable physician's preliminary chart note, comprising:

- (7) a database of patient oriented structured condition-specific interviews having a series of condition-specific questions, accessible by said patient's computers, whereby patients answer said condition-specific questions using patients computer, prior to a doctors office visit (*Campbell*: abstract; col. 13, lines 10-18; Fig. 3-14).

Nevertheless, these features are old and well known in the art, as evidenced by *Campbell*. In particular, *Campbell* discloses a networked medical information system for clinical practices which facilitates the exchange of medical data between doctor and patient, and enables the generation of an editable physician's preliminary chart note, comprising:

- (7) a database of patient oriented structured condition-specific interviews having a series of condition-specific questions, accessible by said patient's computers, whereby patients answer said condition-specific questions using patients computer, prior to a doctors office visit (*Campbell*: abstract; col. 13, lines 10-18; Fig. 3-14).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of *Campbell* with the teachings of *Joao* with the motivation of managing a medical practice and patient information (*Campbell*: col. 1, lines 50-61).

(B) As per currently amended claim 34, *Joao* fails to *expressly* disclose the networked medical information system for clinical practices which facilitates the exchange of medical data between doctor and patient, and enables the generation of an editable physician's preliminary chart note according to claim 33, wherein said database of patient oriented structured condition-specific interviews having a series of condition-specific questions, accessible by said patient's computers, whereby patients answer said questions using patients computer, prior to a doctors office visit, *further includes an interactive branching capability for the purpose of adjusting condition-specific questions based upon answers to previous questions within the database.*

Nevertheless, these features are old and well known in the art, as evidenced by *Campbell*. In particular, *Campbell* discloses the networked medical information system for clinical practices which facilitates the exchange of medical data between doctor and

patient, and enables the generation of an editable physician's preliminary chart note according to claim 33, wherein said database of patient oriented structured condition-specific interviews having a series of condition-specific questions, *further includes an interactive branching capability for the purpose of adjusting condition-specific questions based upon answers to previous questions within the database (Campbell: abstract).*

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of *Campbell* with the teachings of *Joao* with the motivation of managing a medical practice and patient information (*Campbell*: col. 1, lines 50-61).

(C) As per original claim 35, *Joao* fails to *expressly* disclose the networked medical information system for clinical practices which facilitates the exchange of medical data between doctor and patient, and enables the generation of an editable physician's preliminary chart note according to claim 34, wherein said interactive capability for the purpose of adjusting condition-specific questions based upon answers to previous questions within the database, *enables adjustment of questions based upon age and gender of a patient answering said adjusted condition-specific questions.*

Nevertheless, these features are old and well known in the art, as evidenced by *Campbell*. In particular, *Campbell* discloses the networked medical information system for clinical practices which facilitates the exchange of medical data between doctor and patient, and enables the generation of an editable physician's preliminary chart note according to claim 34, wherein said interactive capability for the purpose of adjusting condition-specific questions based upon answers to previous questions within the

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database, *enables adjustment of questions based upon age and gender of a patient answering said adjusted condition-specific questions* (*Campbell*: abstract; col. 9, lines 56-64).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of *Campbell* with the teachings of *Joao* with the motivation of managing a medical practice and patient information (*Campbell*: col. 1, lines 50-61).

(D) As per currently amended claim 36 *Joao* discloses the networked medical information system for clinical practices which facilitates the exchange of medical data between doctor and patient, and enables the generation of an editable physician's preliminary chart note according to claim 33, wherein said pre-visit summary text database used to generate a pre-visit patient summary including condition-specific information derived from said patient answers to said condition-specific questions, *further generates information related to patient's condition and transmits said information to the patient* (*Joao*: col. 14, line 59-col. 15, line 18).

(E) As per currently amended claim 37, *Joao* discloses the networked medical information system for clinical practices which facilitates the exchange of medical data between doctor and patient, and enables the generation of an editable physician's preliminary chart note according to claim 33, wherein said pre-visit summary text database used to generate a pre-visit patient summary including condition-specific information derived from said patient answers to said condition-specific questions,



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*further generates key questions relating to patient's condition, for the patient to ask the physician during the office visit (Joao: col. 1, lines 46-62; col. 19, lines 54-64).*

Joao, however, fails to expressly disclose the networked medical information system for clinical practices which facilitates the exchange of medical data between doctor and patient, and enables the generation of an editable physician's preliminary chart note according to claim 33, wherein said pre-visit summary text database used to generate a pre-visit patient summary including condition-specific information derived from said patient answers to said condition-specific questions, further generates *condition-specific* key questions relating to patient's condition.

Nevertheless, these features are old and well known in the art, as evidenced by *Campbell*. In particular, *Campbell* discloses the networked medical information system for clinical practices which facilitates the exchange of medical data between doctor and patient, and enables the generation of an editable physician's preliminary chart note according to claim 33, wherein said pre-visit summary text database used to generate a pre-visit patient summary including condition-specific information derived from said patient answers to said condition-specific questions, further generates *condition-specific* key questions relating to patient's condition (*Campbell*: abstract; col. 13, lines 10-18; Fig. 3-14).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of *Campbell* with the teachings of *Joao* with the motivation of managing a medical practice and patient information (*Campbell*: col. 1, lines 50-61).

(F) As per currently amended claim 38, *Joao* discloses the networked medical information system for clinical practices which facilitates the exchange of medical data between doctor and patient, and enables the generation of an editable physician's preliminary chart note according to claim 33, wherein said physician oriented condition-specific database, used to generate condition-specific material for the purpose of preparing a pre-visit physician report based upon said patients answers, *further generates expert medical information relating to patients condition for the physician, and transmits said expert medical information to the physician* (*Joao*: col. 14, line 59-col. 15, line 18; col. 20, lines 21-27).

(G) As per currently amended claim 39, *Joao* discloses the networked medical information system for clinical practices which facilitates the exchange of medical data between doctor and patient, and enables the generation of an editable physician's preliminary chart note according to claim 33, wherein said physician oriented condition-specific database, used to generate condition-specific material for the purpose of preparing a pre-visit physician report based upon said patients answers, *further generates information relating to patients condition including a differential diagnosis, work-up algorithms, treatment considerations and literature references, and transmits this information to the physician* (*Joao*: col. 14, line 59-col. 15, line 18; col. 20, lines 21-27).

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(H) As per currently amended claim 41, *Joao* discloses the networked medical information system for clinical practices which facilitates the exchange of medical data between doctor and patient, and enables the generation of an editable physician's preliminary chart note according to claim 33, wherein said medical chart note database used to build an editable preliminary medical chart note including condition-specific clinical information for the physician, is *further used to generate a complete final chart note* (*Joao*: col. 19, lines 65-col. 20, line 8).

(I) As per original claim 42, *Joao* discloses the networked medical information system for clinical practices which facilitates the exchange of medical data between doctor & patient, and enables the generation of an editable physician's preliminary chart note according to claim 41, *wherein said complete final chart note is sent to patients file for the purpose of updating patients file* (*Joao*: col. 19, line 65-col. 20, line 8).

(J) As per currently amended claim 43, *Joao* discloses the networked medical information system for clinical practices which facilitates the exchange of medical data between doctor and patient, and enables the generation of an editable physician's preliminary chart note according to claim 33, wherein said medical education database used to generate a condition-specific post-visit report for the patient, *further enables physician to select condition-specific medical educational materials and transmit said materials to the patient* (*Joao*: col. 17, lines 25-60; col. 4, lines 48-58).

(K) As per currently amended claim 44, *Joao* discloses the networked medical information system for clinical practices which facilitates the exchange of medical data between doctor and patient, and enables the generation of an editable physician's preliminary chart note according to claim 33, wherein said medical education database used to generate a condition-specific post-visit report for the patient, *further generates expert medical information relating to patients condition for the purpose of educating the physician after the office visit* (*Joao*: col. 17, lines 25-60; col. 4, lines 48-58).

(L) Claims 45-51 and 53-56 substantially repeat the same limitations of claims 33-39 and 41-44 and therefore, are rejected for the same reasons given for those claims and incorporated herein.

4. Claims 40 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Joao*, in view of *Campbell*, as applied to claim 33 and 45 above, and further in view of *Segal* (6,754,655; hereinafter *Segal*).

(A) As per currently amended claim 40, *Joao* discloses the networked medical information system for clinical practices which facilitates the exchange of medical data between doctor and patient, and enables the generation of an editable physician's preliminary chart note according to claim 33, wherein said physician oriented condition-specific database, used to generate condition-specific material for the purpose of preparing a pre-visit physician report based upon said patients answers, *further*

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*generates key questions for the patient to ask the physician, and transmits said key questions to the physician along with a rationale for asking each of said key questions, for the purpose of preparing and educating the physician prior to the office visit (Joao: col. 1, lines 46-62; col. 19, lines 54-64).*

Joao, however, fails to expressly disclose the networked medical information system for clinical practices which facilitates the exchange of medical data between doctor and patient, and enables the generation of an editable physician's preliminary chart note according to claim 33, wherein said physician oriented condition-specific database, used to generate condition-specific material for the purpose of preparing a pre-visit physician report based upon said patients answers, *further transmits a rationale for asking each of said key questions, for the purpose of preparing and educating the physician prior to the office visit.*

Nevertheless, these features are old and well known in the art, as evidenced by Segal. In particular, Segal discloses the networked medical information system for clinical practices which facilitates the exchange of medical data between doctor and patient, and enables the generation of an editable physician's preliminary chart note according to claim 33, wherein said physician oriented condition-specific database, used to generate condition-specific material for the purpose of preparing a pre-visit physician report based upon said patients answers, *further transmits a rationale for asking each of said key questions, for the purpose of preparing and educating the physician prior to the office visit (Segal: col. 12, lines 15-24; Examiner considers*

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diagnostic/medical tests to include a question or series of questions that are used to query a patient for the purpose of ascertaining their medical condition.).

One of ordinary skill would have found it obvious at the time of the invention to combine the teachings of *Segal* within the teachings of *Joao* with the motivation of providing a means of learning about a certain healthcare topic (*Joao*: col. 7, lines 10-15) and evaluating the usefulness of a particular finding (*Segal*: col. 2, lines 29-30).

(B) Claim 52 substantially repeats the same limitations of claim 40 and therefore, is rejected for the same reasons given for claim 40 and incorporated herein.

### ***Response to Arguments***

5. Applicant's arguments filed 3/2/07 have been fully considered but are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed 3/2/07.

(A) On page 17 of the 3/2/07 response, Applicant argues that it was not old and well known in the art to enable a patient to access a medical information system back in May of 2000, when the application was first filed.

In response, Examiner respectfully disagrees and notes that *Joao*, in particular, allows a patient to access a medical information system. See *Joao* generally.

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(B) On page 17 of the 3/2/07 response, Applicant argues that *Campbell* does not teach enabling a patient to access a medical information system.

In response, Examiner notes that *Joao*, rather than *Campbell*, was relied on for the aforementioned feature. As such, Applicant is directed to section 5 (A), *supra*.

(C) On page 17 of the 3/2/07 response, Applicant argues that none of the patents cited suggest combining.

In response to applicant's argument that there is no suggestion to combine the references, Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one motivation to combine would be to manage a medical practice and patient information.

(D) On page 19 of the 3/2/07 response, Applicant argues that neither *Joao*, *Campbell* nor *Segal* suggest or even mention the chart note as being generated and/or editable, or using patient information obtained directly from the patient electronically to create a chart note.

In response, Examiner respectfully submits that the teachings of the applied prior art, *in toto*, do indeed teach and suggest the aforementioned features. For example,

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*Joao* teaches chart note as being generated and/or editable, or using patient information obtained directly from the patient electronically to create a chart note (*Joao*: col. 4, lines 30-33; col. 8, lines 29-30; col. 19, lines 65-col. 20, line 5).

(E) On page 19 of the 3/2/07 response, Applicant argues that *Joao* discloses a method whereby the provider, not the patient, is meant to access the central processing computer and enters data and/or information regarding the patient.

In response, Examiner respectfully disagrees and directs Applicant's attention to the *Joao* reference, namely col. 4, lines 30-33; col. 8, lines 29-30; col. 19, lines 65-col. 20, line 5.

(F) On pages 19-20 of the 3/2/07 response, Applicant argues that *Joao* does not disclose the step of providing a condition-specific interview and *Campbell* does not render this feature obvious because in *Campbell*, only medical personnel use the computer to input data and the data is directed toward making a diagnosis.

In response to applicant's arguments against the references individually, Examiner respectfully submits that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).



(G) On page 22 of the 3/2/07 response, Applicant argues that Examiners statements on page 13 of the Office Action do not take into account the difference between a medical interview and a diagnostic/medical test.

Examiner respectfully reiterates that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

(H) Applicant's remaining arguments of the response filed 3/2/07 rely upon or re-hash the issues addressed above and therefore, are moot in view of the responses given above and incorporated herein.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Tomaszewski whose telephone number is (571)272-8117. The examiner can normally be reached on M-F 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (571)272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MT



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